

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE ACTOS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: 4/21/2023

Master File No. 1:13-cv-09244 (RA) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

Before the Court is Plaintiff's April 3, 2023 Letter Motion to compel documents subject to the Court's September 16, 2022 Order concerning Takeda's privilege waiver. (Pls.' 4/3/2023 Ltr. Mot., ECF No. 479/481.) After the motion was fully briefed, the Court directed Takeda to produce documents for the Court's *in camera* review. (4/17/23 Order, ECF No. 502.) Thereafter, on April 21, 2023, Takeda emailed to the Court and Plaintiffs' counsel a letter, which subsequently was filed to the public docket at ECF No. 506, indicating that it intended to produce 27 of the approximately 100 documents subject to the Court's *in camera* review (21 in full and 6 with redactions) that Takeda previously had withheld in full or in part. The Court held a telephone conference with the parties on April 21, 2023.

Following the telephone conference, and for the reasons stated on the record, Plaintiffs' Letter Motion is GRANTED IN PART and DENIED IN PART as follows:

1. No later than Friday, April 28, 2023, Takeda shall produce to Plaintiffs the 27 documents (6 with redactions) that Takeda agreed to produce in its April 21, 2023 email to the Court. Takeda also shall provide the 6 redacted documents to the Court

for the Court's *in camera* review. Otherwise, the Court finds that the documents submitted for *in camera* review properly were withheld.

2. Takeda shall conduct further inquiry into any internal documents from its outside law firms, including without limitation talking points, meeting summaries, etc., that reflect legal advice communicated to Takeda that have not yet been produced. The Court finds, and both sides appear to agree, that such documents fall within the scope of the waiver and shall be produced.
3. No later than Thursday, May 4, 2023, the parties shall meet and confer and submit a joint letter setting forth a proposed protocol for Takeda to re-review documents previously withheld as privileged and not within the scope of the waiver. As set forth during the telephone conference, the Court finds that further review is necessary given the percentage of documents for which Takeda revised its production determination (*i.e.*, approximately 25%) in conjunction with the Court's *in camera* review. To the extent such re-review does not encompass the inquiry required by paragraph 2 of this Order, the joint letter also shall provide an update as to Takeda's inquiry into such documents.
4. The May 4, 2023 joint letter also shall set forth a proposed revised schedule for the remaining deadlines in the case.

It is further Ordered that the parties' motions to seal filed in connection with Plaintiffs' Letter Motion to compel (see ECF Nos. 485, 494, 505) are GRANTED. The Court finds that the proposed redactions and sealing requests are narrowly tailored to prevent unauthorized

dissemination of sensitive business information. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 11920 (2d Cir. 2006) (internal quotation marks omitted).

**SO ORDERED.**

Dated:           New York, New York  
                  April 21, 2023

*Stewart D. Aaron*

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STEWART D. AARON  
United States Magistrate Judge